



Agricultural Marketing Service

7 CFR Part 984

[Doc. No. 22-J-0011; AMS-SC-22-0010; SC22-981-1]

Walnuts Grown in California; Order Amending Marketing Order No. 984

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This final rule amends Marketing Order No. 984, which regulates the handling of walnuts grown in California. USDA approved and adopted amendments proposed by the California Walnut Board (the Board) after due consideration of a public hearing record, and after California walnut producers voted in favor of such amendments in a referendum. This rule eliminates mandatory inspection and certification of inshell and shelled walnuts, and of shelled walnuts for processing; creates a new mechanism for determining and collecting handler assessments; adds the authority to charge interest for late payments; establishes an assessment rate of \$0.0125 per inshell pound of walnuts; expands the definition of “to handle” to include “receive”; and removes volume control authority. In addition, the Agricultural Marketing Service (AMS) made necessary changes to the marketing order to conform to the amendments adopted.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Geronimo Quinones, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 308-2339 or Matthew Pavone, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237;

Telephone: (202) 720-8085, or Email: Geronimo.Quinones@usda.gov or Matthew.Pavone@usda.gov.

Small businesses may request information on this proceeding by contacting Richard E. Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-8085, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing published in the April 1, 2022, issue of the **Federal Register** (87 FR 19020); a Recommended Decision published in the October 25, 2022, issue of the **Federal Register** (87 FR 64385); and a Secretary's Decision and Referendum Order published in the March 7, 2023, issue of the **Federal Register** (88 FR 14083).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Orders 12866, 13563, and 13175.

Notice of this rulemaking action was provided to Tribal governments through the USDA Office of Tribal Relations.

Preliminary Statement

This action finalizes amendments to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 984, as amended (7 CFR part 984), regulating the handling of walnuts grown in California. Part 984 (referred to as the "Order") is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The final rule was formulated on the record of a public hearing held via videoconference technology on April 19 and 20, 2022. The hearing was conducted pursuant to the provisions of the Act, and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900). Notice

of this hearing was published in the **Federal Register** on April 1, 2022 (87 FR 19020), and outlined each of the proposed amendments to the Order.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on November 4, 2022, filed with the Hearing Clerk, USDA, a Recommended Decision and Opportunity to File Written Exceptions thereto by November 25, 2022. No exceptions were filed.

A Secretary's Decision and Referendum Order published in the **Federal Register** on March 7, 2023 (88 FR 14083), directed that a referendum be conducted during the period of April 3 through April 21, 2023, among eligible California walnut growers to determine whether they favored the amendments to the Order. To become effective, per the Order, the proposed amendments required approval by at least two-thirds of those growers voting, or by voters representing at least two-thirds of the volume of walnuts represented by voters voting in the referendum. The amendment to eliminate mandatory inspection and certification of inshell and shelled walnuts, and of shelled walnuts for processing was favored by 81.06 percent of the growers voting in the referendum, representing 87.95 percent of the total volume of walnuts produced by those voting. The amendment to create a new mechanism for determining handler assessments and to add the authority to charge interest for late payments was favored by 81.39 percent of the growers voting in the referendum, representing 86.74 percent of the total volume of walnuts produced by those voting. The amendment to establish an assessment rate of \$0.0125 per inshell pound of walnuts was favored by 77.25 percent of the growers voting in the referendum, representing 84.69 percent of the total volume of walnuts produced by those voting. The amendment to create a new mechanism for collecting handler assessments and to expand the definition of "to handle" to include "receive" was favored by 85.56 percent of the growers voting in the referendum, representing 89.16 percent of the total volume of walnuts produced by those voting. The amendment to remove

volume control authority was favored by 86.34 percent of the growers voting in the referendum, representing 91.40 percent of the total volume of walnuts produced by those voting.

The amendments favored by voters included in this final rule remove from the Order quality and size regulations, including mandatory inspection and certification requirements, and retain the authority to allow the Board to recommend new handling regulations in the future; modify the method of calculation of assessments to be based on inshell pounds and add the authority to allow the Board to recommend late payment charges and/or interest; establish an initial assessment rate of \$0.0125 per inshell pound of walnuts; expand the definition of “to handle” to include “receive”; and remove volume control authority, including reserve pool authority, and revise subsequent sections of the Order to remove volume control provisions.

AMS also recommended changes as necessary to the Order to conform to the amendments adopted, or to correct minor inconsistencies and typographical errors. Accordingly, AMS did the following: added language regarding exemptions in § 984.67; removed the reference to the term “merchantable” in § 984.22 and from the headings and paragraphs in §§ 984.72 and 984.472(a) and (c); revised the heading in § 984.21 from “Eligibility” to “Handler inventory”; revised §§ 984.69(e) and 984.89(b)(4) to replace the term “fiscal period” with “marketing year”; revised the figure in § 984.347; and revised 984.69(e) to replace “current season’s certifications” with “current marketing year”.

AMS reinserted language regarding exemptions under § 984.67 after determining that the language was inadvertently omitted in a prior rulemaking conducted in May 2020. AMS removed the term “merchantable” in § 984.22 and from the headings and paragraphs in §§ 984.72 and 984.472(a) and (c) after determining that there would be no grade and size regulations in effect to distinguish “merchantable” walnuts from other walnuts due to the elimination of mandatory inspection and certification. AMS revised

the heading in § 984.21 from “Eligibility” to “Handler inventory” after determining that the heading, “Eligibility”, did not reflect the purposes of the provision, which defines handler inventory. AMS revised §§ 984.69(e) and 984.89(b)(4) to replace the term “fiscal period” with “marketing year” after determining that the term “fiscal period” is not defined in the Order, whereas “marketing year” is defined and already used throughout the Order. This rule revises § 984.347 to establish an assessment rate of \$0.0125 per pound of inshell walnuts.¹ Finally, 7 CFR 984.69(d) currently refers to permitting advanced assessments when assessments based on the “current season’s certifications” are not yet available. AMS determined that because § 984.51 will be removed, assessments will no longer be based on certifications, and we amended the language in revised § 984.69(e) to refer to “assessments from the current marketing year.” The regulatory text included in this final rule reflects these changes.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS considered the economic impact of this action on small entities. Accordingly, AMS prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. The RFA requires, where feasible, an estimate of the number of small businesses affected by the rule. This regulatory flexibility analysis estimates the proportion of small businesses because it is not feasible to estimate numbers.

¹ A typographical error in the April 1, 2022, hearing notice listed a proposed assessment rate of \$0.125 per pound of inshell walnuts, which was subsequently corrected at the hearing and in the Recommended and Secretary’s Decisions.

According to the hearing record, there are approximately 4,500 producers and 85 handlers in the production area. Record evidence includes reference to a study showing that the walnut industry contributes 85,000 jobs to the economy, directly and indirectly.

The Small Business Administration (SBA) establishes size standards that determine whether a business entity is defined as a small business. The size standards are based on the entity's economic activity, or industry, and generally use the North American Industry Classification System (NAICS). The size standards are expressed in annual receipts in millions of dollars or in number of employees, and indicate the maximum allowed for an entity to be considered a small business.

The SBA defines small agricultural service firms (handlers) as those having annual receipts (sales) equal to or less than \$34 million (Postharvest Crop Activities, NAICS code 115114). Small walnut producers are defined as those having annual receipts equal to or less than \$3.75 million (Tree Nut Farming, NAICS code 111335). (*See* 13 CFR 121.201.)

Effective May 2, 2022, SBA issued a final rule updating small business size standards for agriculture (86 FR 18607). The tree nut farming (NAICS 111335) size standard changed from \$1 million to \$3.25 million. Effective December 19, 2022, SBA issued a final rule again updating the tree nut size small business size standard, raising it to \$3.75 million.

The witnesses who identified themselves as small producers did so using the SBA size standard in effect at the time of the hearing (\$1.0 million of gross annual receipts); they are also small under the current standard of \$3.75 million of gross annual receipts.

Record evidence showed that approximately 82 percent of California walnut handlers (70 out of 85) shipped walnuts valued under \$34 million during the 2018-2019 marketing year and would therefore be considered small handlers according to the SBA definition.

Data in the hearing record from the 2017 Agricultural Census, published by USDA'S National Agricultural Statistics Service (NASS), showed that 4,885 California farms growing walnuts (86.06 percent of the total) had walnut sales of less than \$1 million which is well below the SBA small business size threshold of equal to or less than \$3.75 million. In the 2017 Agricultural Census, the largest sales value size category for walnuts was \$1.0 million.

To obtain an alternative estimate of the number and percentage of small walnut farms, using NASS data from the hearing record, the first step was computing a 3-year average crop value, which was roughly \$1.077 billion for the period 2018-19 to 2020-21. The average walnut bearing acreage over that same 3-year period was 372,500 acres. Dividing crop value by bearing acreage shows a per acre revenue estimate of \$2,891. Using these numbers, it would take approximately 1,297 acres (\$3,750,000 divided by \$2,891) to yield roughly \$3,750,000 in annual walnut sales. The 2017 Agricultural Census data show that 5,330 walnut farms in 2017 (93.9 percent of the total) were below 1,000 acres. One thousand acres is the Census size category closest to the 1,297-acre estimate for an average walnut farm to have \$3.75 million in annual receipts). Therefore, 5,330 of the California walnut farms counted in the 2017 Agricultural Census (93.9 percent or more), would be considered small businesses according to the current SBA definition of \$3.75 million or less in gross annual receipts.

During the hearing held April 19 and 20, 2022, interested parties were invited to present evidence on the probable regulatory impact of the amendments to the Order on small businesses. The hearing record showed that none of the amendments would have a significant economic impact on a substantial number of small agricultural growers or firms.

Material Issues

This action amends the Order to eliminate mandatory inspection and certification of inshell and shelled walnuts, and of shelled walnuts for processing; create a new mechanism for determining and collecting handler assessments; add the authority to charge interest for late payments; establish an assessment rate of \$0.0125 per inshell pound of walnuts; expand the definition of “to handle” to include “receive”; and remove volume control authority.

The hearing record showed that a key reason for the amendments is to reduce the costs and administrative burden to handlers and the Board while providing a cost savings to growers. Witnesses (both large and small) testified to major technological improvements in sorting, processing and storage, and the adoption of new varieties, as key evidence of how current industry practices result in walnut quality that exceeds USDA standards, making the mandatory inspection requirement redundant. Record evidence also showed that the elimination of mandatory inspection and certification will result in cost savings of approximately \$6 million per year and will benefit all handlers and producers.

The new assessment mechanism is based on walnuts received instead of walnuts certified, and the calculation of assessments is based on receipts submitted to the Board. Invoicing begins after January 15, and billings are generated in January, April, and July and as prescribed by the Board. Payments are due to the Board in February, May, and August. Hearing evidence showed that this new mechanism is an equitable change that decreases the administrative burden for all handlers and the Board.

Hearing evidence also showed that producers and handlers of all sizes will benefit from the amendments adopted and that there will be no negative implications on small agricultural firms. Handlers will benefit from reduced operational process redundancies, resulting in lower associated costs and administrative burdens. In addition, producers will benefit from higher grower returns through cost savings passed on from increased

handler efficiencies. Consumers are also anticipated to benefit from lower prices resulting from reduced handler costs.

Lastly, the volume control authority in the Order has been suspended for over 30 years. The record showed that a key reason for removing volume control authority from the Order is that the walnut industry is comprised of mostly small businesses which do not intend to use volume regulation in the future.

These amendments align the Order with current market-driven practices that result in a more efficient industry for producers and handlers of all sizes. USDA did not identify any relevant Federal rules that duplicate, overlap or conflict with this final rule. These amendments are intended to improve the operation and administration of the Order and to assist in the marketing of California walnuts.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Paperwork Reduction Act

Current information collection requirements that are part of the Federal marketing order for California walnuts (7 CFR Part 984) are approved under OMB No. 0581-0178 Vegetables and Specialty Crops. No changes in these requirements are anticipated because of this proceeding. Should any such changes become necessary, they would be submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

Civil Justice Reform

The amendments to the Order herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. The

amendments do not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Order Amending the Order Regulating the Handling of Walnuts Grown in California²

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary to the findings and determinations that were previously made in connection with the issuance of the marketing order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings and Determinations Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon proposed further

² This order shall not become effective unless and until the requirements of §900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

amendment of Marketing Order No. 984, regulating the handling of walnuts grown in California.

Upon the basis of the record, it is found that:

(1) The marketing order, as amended, and as hereby further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby further amended, regulates the handling of walnuts grown in the production area in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order upon which a hearing has been held;

(3) The marketing order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area that is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of walnuts grown in California; and

(5) All handling of walnuts grown in the production area as defined in the marketing order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of walnuts grown in California shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed marketing order amending the Order contained in the Recommended Decision published in the October 25, 2022, issue of the **Federal Register** (87 FR 64385), and as revised in the Secretary's Decision (88 FR 14083), will be and are the terms and provisions of this order amending the Order and are set forth in full herein.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements.

Recommended Further Amendment of the Marketing Order

For the reasons set out in the preamble, the Agricultural Marketing Service amends 7 CFR part 984 as follows:

PART 984 – WALNUTS GROWN IN CALIFORNIA

1. The authority citation for part 984 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Revise § 984.12 to read as follows:

§ 984.12 Substandard walnuts.

Substandard walnuts means all walnuts (whether inshell or shelled) that do not meet the minimum standard prescribed for merchantable walnuts whenever regulations are in effect pursuant to § 984.50.

3. Revise § 984.13 to read as follows:

§ 984.13 To handle.

To handle means to receive, pack, sell, consign, transport, or ship (except as a common or contract carrier of walnuts owned by another person), or in any other way to put walnuts, inshell or shelled, into the current of commerce either within the area of production or from such area to any point outside thereof, or for a manufacturer or retailer within the area of production to purchase directly from a grower. However, sales and deliveries by a grower to handlers, hullers, or other processors within the area of

production shall not, in itself, be considered as handling by a grower. The term “to handle” shall not include sales and deliveries within the area of production between handlers.

4. Amend § 984.21 by revising the section heading to read as follows:

§ 984.21 Handler inventory.

* * * * *

§ 984.22 [Amended]

5. Amend § 984.22 by removing the word “merchantable” in paragraphs (a) and (b).

§§ 984.23 and 984.26 [Removed and Reserved]

6. Amend §§ 984.23 and 984.26 by lifting the stay of May 7, 2020, and removing and reserving the sections.

7. Revise § 984.32 to read as follows:

§ 984.32 To certify.

To certify means the issuance of a certification of inspection of walnuts in accordance with regulations issued pursuant to § 984.50.

§ 984.33 [Removed and Reserved]

8. Amend § 984.33 by lifting the stay of May 7, 2020, and removing and reserving the section.

9. Amend § 984.37 by revising paragraphs (b) and (c)(4) to read as follows:

§ 984.37 Nominations.

* * * * *

(b) Nominations for handler members shall be submitted on ballots mailed by the Board to all handlers in their respective Districts. All handlers' votes shall be weighted by the weight of inshell walnuts handled by each handler during the preceding marketing year. Each handler in the production area may vote for handler member nominees and

their alternates. However, no handler with less than 35% of the crop shall have more than one member and one alternate member. The person receiving the highest number of votes for each handler member position shall be the nominee for that position.

(c) * * *

(4) Nominations for handler members representing handlers that do not handle 35% or more of the crop shall be submitted on ballots mailed by the Board to those handlers. The votes of these handlers shall be weighted by the weight of inshell walnuts handled by each handler during the preceding marketing year. Each handler in the production area may vote for handler member nominees and their alternates of this paragraph (c)(4). However, no handler shall have more than one person on the Board either as member or alternate member. The person receiving the highest number of votes for a handler member position of this paragraph (c)(4) shall be the nominee for that position.

* * * * *

10. Amend § 984.48 by:

- a. Revising paragraph (a) introductory text;
- b. Removing the words “merchantable and substandard” in paragraph (a)(3);
- c. Lifting the stay of May 7, 2020, on paragraphs (a)(6) and (7) and removing both paragraphs; and
- d. Redesignating paragraphs (a)(8) and (9) as paragraphs (a)(6) and (7), respectively.

The revision reads as follows:

§ 984.48 Marketing estimates and recommendations.

(a) Each marketing year the Board shall hold a meeting, prior to October 20, for the purpose of recommending to the Secretary a marketing policy for such year. Each

year such recommendation shall be adopted by the affirmative vote of at least 60% of the Board and shall include the following:

* * * * *

§ 984.49 [Removed and Reserved]

11. Amend § 984.49 by lifting the suspension of paragraph (b)(1) of August 7, 1995, and the stay of May 7, 2020, and removing and reserving the section.

12. Amend § 984.50 by lifting the stay of May 7, 2020, on paragraph (e) and revising the section to read as follows:

§ 984.50 Grade, quality, and size regulations.

(a) The Board may recommend, subject to the approval of the Secretary, regulations that:

(1) Establish handling requirements for particular grades, sizes, or qualities, or any combination thereof, of any or all varieties or classifications of walnuts during any period;

(2) Establish different handling requirements and tolerance limits for particular grades, sizes, or qualities, or any combination thereof, for different market destinations;

(3) Establish different handling requirements for the processing of shelled walnuts and the handling thereof; and

(4) Establish inspection and certification requirements for the purposes of this paragraph (a) and paragraph (b) of this section.

(b) During any period, regulations issued under this section are in effect, no handler shall handle or process walnuts into manufactured items or products unless they meet the applicable requirements under this section as evidenced by certification acceptable to the Board.

(c) Regulations issued under this section may be amended, modified, suspended, or terminated whenever it is determined:

(1) That such action is warranted upon recommendation of the Board and approval by the Secretary, or other available information; or

(2) That regulations issued under this section no longer tend to effectuate the declared policy of the Act.

§§ 984.51 and 984.52 [Removed and Reserved]

13. Remove and reserve §§ 984.51 and 984.52

§§ 984.54 and 984.56 [Removed and Reserved]

14. Amend §§ 984.54 and 984.56 by lifting the stay of May 7, 2020, and removing and reserving the sections.

15. Revise § 984.64 to read as follows:

§ 984.64 Disposition of substandard walnuts.

During any period when regulations are in effect pursuant to § 984.50, substandard walnuts may be disposed of only for manufacture into oil, livestock feed, or such other uses as the Board determines to be noncompetitive with existing domestic and export markets for merchantable walnuts and with proper safeguards to prevent such walnuts from thereafter entering channels of trade in such markets. Each handler shall submit, in such form and at such intervals as the Board may determine, reports of his production and holdings of substandard walnuts and the disposition of all substandard walnuts to any other person, showing the quantity, lot, date, name and address of the person to whom delivered, the approved use and such other information pertaining thereto as the Board may specify.

§ 984.66 [Removed and Reserved]

16. Amend § 984.66 by lifting the stay of May 7, 2020, and removing and reserving the section.

17. Amend § 984.67 by:

a. Lifting the stay of May 7, 2020, on paragraph (a) and removing the paragraph;

- b. Redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively;
- and
- c. Revising newly designated paragraph (a).

The revision reads as follows:

§ 984.67 Exemptions.

(a) *Exemptions from assessments and quality regulations*—(1) *Sales by growers direct to consumers.* Any walnut grower may handle walnuts of his production free of the regulatory and assessment provisions of this part if he sells such walnuts in the area of production directly to consumers under the following types of exemptions:

- (i) At roadside stands and farmers' markets;
- (ii) In quantities not exceeding an aggregate of 500 pounds of inshell walnuts or 200 pounds of shelled walnuts during any marketing year (at locations other than those specified in paragraph (a)(1)(i) of this section); and
- (iii) If shipped by parcel post or express in quantities not exceeding 10 pounds of inshell walnuts or 4 pounds of shelled walnuts to any one consumer in any one calendar day.

(2) *Green walnuts.* Walnuts which are green and which are so immature that they cannot be used for drying and sale as dried walnuts may be handled without regard to the provisions of this part.

(3) *Noncompetitive outlets.* Any person may handle walnuts, free of the provisions of this part, for use by charitable institutions, relief agencies, governmental agencies for school lunch programs, and diversion to animal feed or oil manufacture pursuant to an authorized governmental diversion program.

* * * * *

18. Amend § 984.69 by lifting the stay of May 7, 2020, on paragraph (b) and revising the section to read as follows:

§ 984.69 Assessments.

(a) *Requirement for payment.* Each handler shall pay the Board, on demand, his or her pro rata share of the expenses authorized by the Secretary for each marketing year. Each handler's pro rata share shall be the rate of assessment per inshell pound of walnuts fixed by the Secretary times the pounds of walnuts received by him or her for his or her own account (except as to receipt from other handlers on which assessments have been paid). At any time during or after the marketing year the Secretary may increase the assessment rate as necessary to cover authorized expenses and each handler's pro rata share shall be adjusted accordingly.

(b) *Assessment rate.* The assessment rate set out may be modified by the Secretary, based upon a recommendation of the Board or other available data.

(c) *Late payment.* If a handler does not pay assessments within the time prescribed by the Board, the assessment may be increased by a late payment charge and/or an interest rate charge at amounts prescribed by the Board with approval of the Secretary.

(d) *Accounting.* If at the end of a marketing year the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (d)(2) or (3) of this section, it shall be refunded to handlers from whom collected, and each handler's share of such excess funds shall be the amount of assessments he or she has paid in excess of his or her pro rata share of the actual expenses of the Board.

(2) Excess funds may be used temporarily by the Board to defray expenses of the subsequent marketing year provided each handler's share of such excess shall be made available to him or her by the Board within five months after the end of the year.

(3) The Board may carry over such excess into subsequent marketing years as a reserve: Provided, that funds already in reserve do not exceed approximately two years' budgeted expenses. In the event that funds exceed two marketing years' budgeted expenses, future assessments will be reduced to bring the reserves to an amount that is less than or equal to two marketing years' budgeted expenses. Such reserve funds may be used:

(i) To defray expenses, during any marketing year, prior to the time assessment income is sufficient to cover such expenses;

(ii) To cover deficits incurred during any year when assessment income is less than expenses;

(iii) To defray expenses incurred during any period when any or all provisions of this part are suspended; and

(iv) To meet any other such costs recommended by the Board and approved by the Secretary.

(e) *Advanced assessments and commercial loans.* To provide funds for the administration of the provisions of this part during the part of a marketing year when neither sufficient operating reserve funds nor sufficient revenue from assessments for the current marketing year are available, the Board may accept payment of assessments in advance or may borrow money from a commercial lending institution for such purposes.

(f) *Termination.* Any money collected from assessments hereunder and remaining unexpended in the possession of the Board upon termination of this part shall be distributed in such manner as the Secretary may direct.

19. Revise § 984.72 to read as follows:

§ 984.72 Reports of walnuts handled.

Each handler who handles walnuts, inshell or shelled, at any time during a marketing year shall submit to the Board in such form and at such intervals as the Board

may prescribe, reports showing the quantity so handled and such other information pertinent thereto as the Board may specify.

20. Revise § 984.77 to read as follows:

§ 984.77 Verification of reports.

For the purpose of verifying and checking reports filed by handlers or the operations of handlers, the Secretary and the Board through its duly authorized representatives shall have access to any premises where walnuts and walnut records are held. Such access shall be available at any time during reasonable business hours. Authorized representatives shall be permitted to inspect any walnuts held and any and all records of the handler with respect to matters within the purview of this part. Each handler shall maintain complete records on the receiving, holding, and disposition of both inshell and shelled walnuts. Each handler shall furnish all labor necessary to facilitate such inspections at no expense to the Board or the Secretary. Each handler shall store all walnuts held by him or her in such manner as to facilitate inspection and shall maintain adequate storage records, which will permit accurate identification of respective lots and of all such walnuts held or disposed of theretofore. The Board, with the approval of the Secretary, may establish any methods and procedures needed to verify reports.

§ 984.89 [Amended]

21. Amend § 984.89 in paragraph (b)(4) by removing the term “fiscal period” and adding in its place the term “marketing year”.

22. Revise § 984.347 to read as follows:

§ 984.347 Assessment rate.

On and after September 1, 2023, an assessment rate shall be fixed at \$0.0125 per inshell pound of California walnuts.

§ 984.450 [Removed and Reserved]

23. Amend § 984.450 by lifting the stay of May 7, 2020, on paragraphs (a) and (b) and removing and reserving the section.

§ 984.451 [Removed and Reserved]

24. Amend § 984.451 by lifting the stay of May 7, 2020, on paragraph (c) and removing and reserving the section.

§ 984.452 [Removed and Reserved]

25. Remove and reserve § 984.452.

§ 984.456 [Removed and Reserved]

26. Amend § 984.456 by lifting the stay of May 7, 2020, and removing and reserving the section.

§ 984.459 [Amended]

27. Amend § 984.459 by removing and reserving paragraph (a)(3).

§ 984.464 [Removed and Reserved]

28. Amend § 984.464 by lifting the stay of May 7, 2020, on paragraph (a) and removing and reserving the section.

29. Revise § 984.472 to read as follows:

§ 984.472 Reports of walnuts, received, shipped, and committed.

(a) Reports of walnuts shipped during a month shall be submitted to the Board on California Walnut Board (CWB) Form No. 6 not later than the 5th day of the following month. Such reports shall include all shipments during the preceding month and shall show for inshell and shelled walnuts: the quantity shipped; whether they were shipped into domestic or export channels; and for exports, the quantity by country of destination. If a handler makes no shipments during any month, he/she shall submit a report marked "None." If a handler has completed his/her shipments for the season, he/she shall mark the report "Completed," and he/she shall not be required to submit any additional CWB Form No. 6 reports during the remainder of that marketing year.

(b) Reports of walnuts purchased directly from growers by handlers who are manufacturers or retailers shall be submitted to the Board on CWB Form No. 6, not later than the 5th day of the month following the month in which the walnuts were purchased. Such reports shall show the quantity of walnuts purchased.

(c) Reports of walnuts on which handlers have made purchase commitments with buyers during the month, but which have not yet been shipped, shall be submitted to the Board on CWB Form No. 6, not later than the 5th day of the month following the month in which the walnuts were committed. Such reports shall show the quantity of walnuts committed in either inshell or shelled pounds. If the handler made no commitments during any month, he/she shall mark "None" in the "Purchase Commitments" section of CWB Form No. 6.

30. Revise § 984.476 to read as follows:

§ 984.476 Report of walnut receipts produced outside California or the United States.

Each handler who receives walnuts from outside California or the United States shall file with the Board, on CWB Form No. 7, a report of the receipt of such walnuts. The report shall be filed as follows: On or before December 5 for such walnuts received during the period September 1 to November 30; on or before March 5 for such walnuts received during the period December 1 to February 28 (February 29 in a leap year); on or before June 5 for such walnuts received during the period March 1 to May 31; and on or before September 5 for such walnuts received during the period June 1 to August 31. The report shall include the quantity of such walnuts received, the country of origin for such walnuts, and whether such walnuts are inshell or shelled.

Erin Morris,
Associate Administrator,
Agricultural Marketing Service.

